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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)))	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	))))	MM Docket No. 01-317
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF BLOCK COMMUNICATIONS, INC.

Block Communications, Inc. ("Block"), by its attorneys and in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding,[1] hereby submits these comments in support of a total repeal of the Commission newspaper/broadcast cross-ownership rule. Block owns or has an attributable interest in five television broadcast stations in small and middle-market communities across the country and owns the Pittsburgh Post-Gazette and The Blade, which serves Toledo, Ohio. Block looks forward to the day when the Commission's outdated ownership restrictions cease to curtail the competitive energies of broadcasters and newspaper operators who look to re-shape these traditional media into exciting new content delivery systems capable of competing with national media conglomerates like Comcast, Liberty Media?

[1] 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules, *Notice of Proposed Rule Making*, FCC 02-249 (rel. September 23, 2002) (*"OwnershipNPRM"*).

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and AOL Time Warner that increasingly dominate both local and national media markets. In the case of newspaper/broadcast cross-ownership, that day should be today.

Rarely, if ever, has a rule hcen so thoroughly discredited as has been the newspaper/broadcast cross-ownership rule.’ The Commission held a full proceeding on this rule last year,[3] developing a complete record that amply demonstrated that the newspaperhroadcast cross-ownership restriction has outlived any usefulness it may ever have had.[4] The Commission now asks for additional comment on the rule to the extent such comment is called for by the *Ownership NPRM*, At this point, the only useful comment on this rule is that it must be jettisoned.

The *Commission* is compelled to abandon the newspapedbroadcast cross-ownership rule for at least ***3*** reasons. First, the rule places an unjustified competitive handicap on local broadcasters and newspaper operators. Enacted 28 years ago, the rule was designed to combat the evils expected to be caused by excessive concentration in local media markets and most recently was retained because it promotes “diversity” at the local level.’ To local media providers like Block, however, the most diverse aspect of local markets is the diversity of competition for news and entertainment provided by competing content providers like cable television, DBS, and the Internet. From the perspective of local media markets, competition is

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[2] The newspaper/broadcast cross-ownership rule prohibits the common ownership of a daily newspaper and a broadcast station in the same market. *See* 47 C.F.R. § 73.3555(d).

[3] *See* Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197, ***Order** and Notice of Proposed Rule Making*, 16 FCC Rcd 17283 (2001).

[4] *Cf. Ownership NPRM* at 67 and n.311 (separale statement of Commissioner Kevin J. Martin)

[5] *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant lo Section 202* ***of*** *the Telecommunications Act of 1996, Biennial Review Report*, 15 FCC Rcd 11058, 11105-11110 (2000) *(“1998 Biennial Review”)*.

both robust and divcrsc. Equally important, much of the competition comes from national media providers that are able to realize tlie efficiencies inherent in the ability to compete in multiple markets. Many of these providers do not labor under ownership restrictions that are nearly so oncrous. It is past time the Commission removed the newspaperhroadcast competitive handicap and allowed local broadcasl/newspaper combinations *to* compete on a level playing field with other media whose ownership restrictions have been significantly reduced.

Second, the Commission now has itself produced additional evidence that the newspaper/broadcast cross-owncrship restriction serves no identifiable public interest. The Coinmission released no less than live studies, each of which supports repeal of the rule. First, the *Nielsen Consumer Survey* identified several solid and substitutable competitors to local ncwspapers in the provision of news services, including cable and satellite television, the Internet, .and wcckly newspapers.“ Second, the *Owner Diversity Study* found that by almost any measure, diversity of ownership at the local level has significantly increased over the past forty years. This has been truc even through recent consolidation, with diversity of owners and outlets increasing in almost all markets..[7] Third, the *Pritchard Study* explodes the myth that co-owned local media speak with a unitary editorial voice.’ Indeed the *Pritchard Study* indicates that the opposite is the case, undermining tlie traditional Commission presumption that only diversity of

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[6] Nielsen Media Research, “Consumer Survey on Media Usage,” FCC Media Ownership Working Group, 2002-8, September 2002 (“*Nielsen Consumer Survey*”).

[7] Scott Roberts, *et al.*, “A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000),” September 2002, FCC Media Bureau Staff Research Paper, 2002-1 (“*Owner Diversity Study*”).

[8] David Pritcliard, “Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: a Study of News Coverage of the 2000 Presidential Campaign,” FCC Media Ownership Working Group, 2002-2, September 2002 (“*Pritchard Study*”).

ownership equals diversity of viewpoint in local markets. Fourth, the *Spavins Study*,[9] demonstrates that larger local media companies tend to be capable of providing greater amounts of high quality local news and public affairs programmiiig. This obvious public benefit would become more ubiquitous if the Commission allowed local media providers to realize the efficiencies that combinations of broadcast stations and newspapers would produce. Fifth, the *Substitutability Study*[10] suggests that local newspaper and television advertising are complementary inputs in the sales efforts of local businesses," and, as such, participate in separate advertising markets. Thus, under traditional anti-trust analysis, there is no justification for prohibiting their common ownership. These studies simply provide further evidence of what the Commission learned in last year's proceeding: the newspaper/broadcast cross-ownership rule serves no public interest while retaining the it appears to impair multiple public benefits.

Third and most decisively for this biennial review proceeding, the standard the Commission must employ under Section 202(h) of the Telecommunications Act of 1996 is one of strict necessity.[12] The District of Columbia Circuit has held that the Section 202(h) provides a

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[9] Thomas C. Spavins, *et al.*, "The Measurement of Local Television News and Public Affairs," undated (the "*Spavins Study*").

[10] C. Anthony Bush, "On tlie Substitutability of Local Newspaper, Radio and Television Advertising in Local Business Sales," September 2002, FCC Media Bureau Staff Research Paper, 2002-10 (tlie "*Substitutability Study*").

[11] *Id.* at 14

[12] Section 202(h) of the Telecommunications Act of 1996, requires the Commission to: "review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications **Act** of 1934 and . . . determine whether any of such rules at-e necessary in the public interest as the result of competition . ." and to " . . . repeal or modify any regulation it determines to be no longer in the public interest." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1906).

deregulatory presumption," and the plain language of the statute shows that the Commission cannot retain this rule unless it is indispensable to the protection of some public interest.[14] The evidence in this proceeding says the opposite. Accordingly, the Commission cannot show that the rule is necessary to any public interest and would be on much safer ground if it concluded that eliminating the rule would serve the public good

In light of the massive competition faced by broadcasters and newspaper operators in every local market, and the substantial evidence that the newspaperhroadcast cross-ownership rule undermines several public intercst, Block requests that the rule be eliminated entirely.

Respectfully Submitted,

BLOCK COMMUNICATIONS, INC.

John R. Feore, Jr. by jer.

Joh R. Feore, Jr.
Jas n E. Rademacher

Their Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Telephone: (202) 776-2000
Fax: (202) 776-2222

[13] *Fox Television Stations v. FCC*, 280 F.3d 1027 (2000), *rehearing granted in part*, 293 F.3d 537.

[14] *Cf. Ownership NPRM* at 66 (Separate Statement of Commissioner Martin).